

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Customs and Patent Appeals and the United States Court of International Trade

Vol. 15

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No. 26

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81-167)

BONDS

Approval and discontinuance of bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: June 11, 1981

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
American Oceanic Shipping Corp., 50 Broad St., New York, NY; Old Republic Ins. Co. D 3/25/81	Mar. 20, 1980	Mar. 21, 1980	New York, Seaport \$10,000
American Trading & Shipping, 1200 N.W. 78th Ave., Suite 103, Miami, Fla.; St. Paul Fire & Marine Ins. Co.	Feb. 20, 1981	Feb. 25, 1981	New Orleans, LA \$10,000
Morflot American Shipping Inc., as agent for Balt-Gulf Lines, 67 Walnut Ave., Clark, NJ; Sentry Ins. A Mutual Co. D 3/2/81	Oct. 13, 1976	Nov. 1, 1976	San Francisco, CA \$10,000
Morflot America Shipping Inc., as agent for Blasco Lines, 67 Walnut Ave., Clark, NJ; Sentry Ins. A Mutual Co. D 3/2/81	Oct. 13, 1976	Nov. 1, 1976	San Francisco, CA \$10,000

CUSTOMS

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Combined Maritime Agencies, Inc., 39 Broadway, New York, NY; American Motorists Ins. Co.	Feb. 23, 1981	Feb. 25, 1981	New York, NY \$10,000
Eckert Overseas Agency, Inc., 19 Rector St., New York, NY; Federal Ins. Co. D 3/22/81	Mar. 21, 1972	Mar. 21, 1972	New York Seaport \$10,000
Eldorado Nuclear Ltd., 215 John St., Port Hope, Ontario, Canada; Old Republic Ins. Co. (PB 7/26/71) D 7/26/81	July 26, 1981	July 26, 1981	Detroit, MI \$10,000
Hong Kong Islands Shipping Co. (U.S.A.) Ltd., 1521 Buena Vista Ave., P.O.B. 2453, Alameda, CA; Old Republic Ins. Co.	Mar. 2, 1981	Mar. 2, 1981	San Francisco, CA \$10,000
Intercontinental Transportation Services Ltd., P.O. Box 797, Hamilton 5, Bermuda; Safeco Ins. Co. of America	Jan. 15, 1981	Feb. 10, 1981	Galveston, TX \$50,000
Intercean Steamship, 465 California St., Rm 1001, San Francisco, CA; Old Republic Ins. Co.	Jan. 1, 1981	Feb. 2, 1981	San Francisco, CA \$10,000
Jeter Freight Forwarders, Inc., P.O.B. 60612 AMF, Houston, TX; Washington International Ins. Co.	Feb. 10, 1981	Feb. 25, 1981	Houston, TX \$10,000
J. D. MacDonald & Co., Inc., 239 Prescott St., Boston, MA; Washington International Ins. Co.	Feb. 11, 1981	Mar. 23, 1981	Portland, ME \$10,000
Morflot American Shipping Inc. (See Balt-Gulf Lines)			
Morflot America Shipping, Inc. (See Blasco Lines)			
Ocean World Lines, Inc., 1 WTC, New York, NY; Washington International Insurance Co.	Apr. 8, 1981	Apr. 8, 1981	New York Seaport \$10,000
Oceans Technology Company, 559 Holmes Blvd., Gretna, LA; Old Republic Ins. Co.	Apr. 6, 1981	Apr. 7, 1981	New Orleans, LA \$10,000
Odd Berg/Bergship S/A, 4105 Plaza Towers Bldg., New Orleans, LA; Old Republic Ins. Co.	Mar. 26, 1981	Mar. 31, 1981	New Orleans, LA \$10,000
Offshore Gases & Chemicals, Inc., 2002 Engineers Rd., Belle Chasse, LA; Old Republic Ins. Co.	Mar. 26, 1981	Feb. 27, 1981	New Orleans, LA \$10,000
Philippines, Micronesia & Orient Navigation Co., d/b/a: P M & O Lines, 181 Fremont St., San Francisco, CA; Old Republic Ins. Co.	Feb. 18, 1981	Mar. 2, 1981	San Francisco, CA \$10,000
Quigley & Manard, Inc., Peace Bridge, Buffalo, NY; Seaboard Surety Co. D 4/3/81	June 20, 1981	June 21, 1982	Buffalo, NY \$10,000
Refricentro, Inc., 380 Barbosa Ave., Hato Rey, PR; Continental Casualty Co.	Jan. 29, 1981	Jan. 30, 1981	San Juan, PR \$20,000
Frank Sinatra & Milton A. Rudin, dba: Somerset Wine Distributing Co., 3000 Pacific Ave., Long Beach, CA; St. Paul Fire & Marine Ins. Co. D 2/6/81	Jan. 28, 1977	Feb. 11, 1977	Los Angeles, CA \$50,000

See footnote at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Uniroyal Inc., Middlebury, CT; American Home Assurance Co. D 4/15/81	Mar. 10, 1980	Mar. 31, 1980	New York Seaport \$10,000

¹ Surety is St. Paul Fire & Marine Ins. Co.

BON-3-10

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81-168)

(19 CFR Parts 103, 152, 175)

Customs Regulations Relating To Availability of Information

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the Customs Regulations relating to the public disclosure of information. There have been substantial changes to the relevant law since publication of the prior regulations. The revision brings the regulations into conformity with the current law.

This action has been taken after publication of a notice of proposed rulemaking and careful analysis of public comment received.

These amendments do not constitute a major regulation within the meaning of Executive Order 12291, relating to Federal Regulation.

EFFECTIVE DATE: 7-24-81.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Freedom of Information and Privacy Branch, U.S. Customs Service, 1301 Constitution Avenue NW, Washington D.C. 20229 (202-566-8681).

SUPPLEMENTARY INFORMATION:

BACKGROUND

A proposed revision of Part 103, Customs Regulations (19 CFR Part 103), relating to the public disclosure of information was published in the Federal Register on August 20, 1979 (44 FR 48709). This revision was deemed necessary due to the amendments to the Freedom of Information Act by Public Law 93-502, 80 Stat. 1561,

and the conforming amendments to the Department of the Treasury regulations concerning public access to records (31 CFR Part 1) published in the Federal Register on February 20, 1975 (40 FR 7439).

Part 103 sets forth procedures whereby the public may obtain access to records created and maintained by the United States Customs Service. The procedures involve the publication of certain information in the Federal Register, the public inspection or copying of information, and the submission of specific requests for records to Headquarters, United States Customs Service, or to offices of the regional commissioners of Customs. Also included are procedures for appeal of an initial administrative determination to deny such a request and a uniform schedule of fees for the search and duplication of Customs records. Officers of the Customs Service who are responsible for making the initial and appellate determinations as to whether a request for records shall be granted are designated.

Exemptions from disclosure, conforming to the Freedom of Information Act amended by Public Law 93-502 are set forth.

DISCUSSION OF MAJOR COMMENTS

Comments received in response to publication of the proposed revision of Part 103 in the Federal Register (44 FR 48709) have been carefully analyzed and are summarized below.

The majority of comments were concerned primarily with the protection of confidential business information. These comments were critical of section 103.14 which permits limited access to information on vessel manifests to both accredited members of the press, and to the public and allows the publication of certain of this information. Generally, privileged or confidential information contained in vessel manifests is exempt from disclosure under section 103.12. In this regard, commenters believed that competitors could glean from vessel manifests and summary statistical reports shipping methods, ports of entry, sources of supply, volume cost and selling price of goods, and determine market expectations and plans for new markets. Concerns were expressed that this private data, developed at a cost to a firm, would become publicly available. According to these commenters, competitors would thereby gain a substantial market advantage. The commenters conceive that if one information service published identifying data for a shipment plus its quantity, and a second service published the data for the same shipment plus its price, a subscriber to both services would obtain the combination of information which Customs would not release to either the press or public.

Criticism is also raised that section 103.14 permits selective disclosure inasmuch as accredited members of the press are allowed to examine vessel manifests which the general public may not.

It is the position of the Customs Service that the proposed regulation adequately balances the interests of the parties involved by generally exempting from disclosure privileged or confidential information contained in vessel manifests, while still insuring relative ease of publication of legally available information. As an added precaution, section 103.14(d) permits, upon written application, a shipper, consignee, or importer to request, that its name be withheld from public disclosure. In addition, under section 103.14(b), a press representative must submit to Customs for review any copy or notation made from a vessel manifest. Therefore, although the press may examine information not available to the public, the ability to copy such information or take notes of such information is severely limited by section 103.14.

It is pertinent to note that, on the other hand, certain comments received oppose the suspension of disclosure provision as currently written inasmuch as it does not require some factual determination of specific harm to be made.

Parenthetically, it also must be noted that that portion of Treasury Decision 81-19, published in the Federal Register on January 29, 1981 (46 FR 9567), relating to vessel manifest disclosure requirements, has been incorporated into this document as section 103.14.

One commenter recommended that section 103.15, which provides for sanctions against Customs officers and employees for improper disclosure to exporters and importers, be broadened to encompass all unauthorized disclosures. In response to this comment, the language of section 103.15 has been changed to invoke sanctions for unauthorized disclosures to any person not authorized by law or regulation to receive the disclosed information.

In reference to judicial review of an administrative action on an information request, one commenter noted that the authority formerly possessed by the Civil Service Commission to investigate certain withholdings has been transferred to the Special Counsel, Merit Systems Protection Board. (Section 906(a)(10) of the Civil Service Reform Act of 1978). In response, appropriate changes in section 103.9 have been made.

PROCEDURAL CHANGES

In accordance with a change in the internal procedures in Customs Headquarters, the proposed section on the maintenance of files and records, which invested the Director, Entry Procedures and Penalties Division, at Headquarters with the responsibility for

maintaining files on information requests, has been deleted. Henceforth, information requests should be made at the Freedom of Information and Privacy Branch, Headquarters (section 103.5(d)), and the appropriate division director at Headquarters shall make the initial determination to grant or deny a request for a record maintained in that particular division (section 103.6(a)(2)). Appeal of an initial determination shall no longer be made to the Assistant Commissioner of Customs, but rather to the Director, Office of Regulations and Rulings (section 103.7).

Pursuant to Executive Order 12188 (45 FR 69273), which transferred responsibility for the administration of antidumping and countervailing duty laws to the Secretary of Commerce, references to records on antidumping and countervailing duty in section 103.11 have been deleted.

INAPPLICABILITY OF REGULATORY FLEXIBILITY ACT

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) because the notice of proposed rulemaking on which the final rule is based was issued prior to January 1, 1981, the effective date of the Act.

DRAFTING INFORMATION

The principal authors of this document were Harold I. Loring and Todd J. Schneider, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

AMENDMENTS TO THE REGULATIONS

Parts 103, 152, and 175, Customs Regulations, (19 CFR Parts 103, 152, 175) are amended as set forth below.

WILLIAM T. ARCHY,
Acting Commissioner of Customs.

Approved: May 7, 1981.

JOHN P. SIMPSON,

Acting Assistant Secretary of the Treasury.

(d) *Denial of request.* The Customs officer who denies a request for records (whether in whole or in part) shall mail written notice of the denial to the requester. The letter of notification shall contain (1) the physical location of the requested records, (2) the applicable exemption(s) and reason for not granting the request, (3) the name and title or position of the Customs officer who denied the request, (4) ad-

vice on the right to administrative appeal in accordance with § 103.7, and (5) the title and address of the Customs officer who is to decide any appeal.

(e) *Inability to locate records within time limits.* If a requested record cannot be located and evaluated within the initial 10-day period or the extension period allowed under § 103.8(a), the Customs officer who is responsible for the initial determination shall continue to search for the records. However, that officer shall also notify the requester of the facts and inform the requester that he or she may consider the notification to be a denial of access within the meaning of paragraph (d) of this section, and provide the requester with the address for the submission of an administrative appeal. The requester may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. A voluntary extension of time does not waive a requester's right to appeal any ultimate denial of access or to appeal a failure to locate the records within the voluntary extension period.

§ 103.7 ADMINISTRATIVE APPEAL OF INITIAL DETERMINATION

(a) *To whom appeals should be submitted.* A requester may submit an administrative appeal to the Director, Office of Regulations and Rulings, within 35 days after the date of notification described in § 103.6 or the date of the letter transmitting the last records released, whichever is later. A requester shall mail or personally deliver an appeal to the United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

(b) *Form of appeal.* The Administrative appeal shall—

- (1) Be in writing and signed by the requester;
- (2) Have conspicuously printed on the face of the envelope the words "Freedom of Information Act Appeal";
- (3) Reasonably describe, in accordance with § 103.5(e), the records to which the appeal relates;
- (4) Set forth the address where the requester desires to be notified of the determination on appeal;
- (5) Specify the date of the initial request and the date and control number of the letter denying the initial request; and
- (6) Petition the Director, Office of Regulations and Rulings, to grant the request for records and state any arguments in support thereof.

(c) *Disposition of appeal.* The Customs officer or employee who receives an appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Director, Office of Regulations and Rulings, shall acknowledge and advise the appellant of the date of receipt and of the date that a re-

sponse is due under this paragraph. The Director shall affirm the initial denial (in whole or in part) or grant the request for records and notify the appellant of that determination by letter mailed within 20 days (exclusive of Saturdays, Sunday, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to § 103.8(a). The purpose of the letter of denial is to inform the appellant of the reason for the denial and the right to judicial review of that denial under 5 U.S.C. 552(a)(4)(B). If the Director is unable to act on an appeal within the 20-day period (or any extension thereof pursuant to § 103.8(a)), the Director shall send written notice of that fact to the appellant. In those circumstances, an appellant is entitled to commence an action in a district court as provided in § 103.9 despite any continuation in the processing of an appeal. However, the appellant may also be invited, in the alternative, to agree to a voluntary extension of time in which to decide the appeal. A voluntary extension does not waive the right of the appellant to ultimately commence an action in a United States district court on the appellant's request.

§ 103.8 TIME EXTENSIONS.

(a) *Ten-day extension.* In unusual circumstances, the Customs Officer who is responsible for deciding an initial request or an appeal may extend the time limitations set in §§ 103.6 and 103.7 after written notice to the requester or appellant. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than 10 additional working days. (For example, if an extension pursuant to this paragraph is invoked in connection with an initial determination, any unused days of the extension period may be invoked in connection with the determination on administrative appeal by written notice from the Director, Office of Regulations and Rulings, who is to make the appellate determination. If no extension is sought for the initial determination, and extension of 10 days may be added to the ordinary 20-day period for appellant review.) Generally, extensions will be invoked only to the extent reasonably necessary to properly respond to a request. As used in this paragraph, "unusual circumstances" means at least one of the following:

- (1) The need to search for and collect the requested records from field facilities or other establishments in buildings other than the building in which the office of the Customs officer to whom the request is made is located.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request, among two or more constituent units within Department of the Treasury, or within the United States Customs Service (other than the legal staff or Public Affairs Division) having substantial subject-matter interest therein. Consultations with personnel of the Department of Justice concerned with requests for records under the Freedom of Information Act, as amended (5 U.S.C. 552), do not constitute a basis for an extension under this subparagraph.

(b) *Extension by judicial review.* If the United States Customs Service fails to comply with the time limitations specified in §§ 103.6 and 103.7 and the requester commences an action under § 103.9, the court in which the suit was initiated may retain jurisdiction and allow the United States Customs Service additional time to review its records, if the Customs Service shows the existence of exceptional circumstances and the exercise of due diligence in responding to the request.

§103.9 JUDICIAL REVIEW.

(a) *Failure to comply with time limitations.* If the United States Customs Service fails to comply with the time limitations specified in §§103.6, 103.7 or 103.8, a requester is considered to have exhausted the administrative remedies with respect to the request.

(b) *Procedure of initiating judicial review.* If a request for records is denied upon appeal pursuant to §103.7, or if no determination is made within the 10-day or 20-day periods specified in §§103.6 and 103.7, respectively, together with an extension pursuant to §103.8(a) or by agreement of the requester, the requester may commence an action under 5 U.S.C. 552(a)(4)(B) in a United States district court in the district (1) in which the requester resides, (2) in which the requester's principal place of business is located, (3) in which the records are situated, or (4) in the District of Columbia. Service of process in that action is governed by the Federal Rules of Civil Procedure (28 U.S.C. App.) applicable to actions against an agency of the United States. The Chief Counsel, United States Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 is the officer designated to receive any service of process.

(c) *Proceeding against officer or employee.* Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that the Customs officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is

warranted against that officer or employee. The Special Counsel, after investigation and consideration of the evidence submitted, submits its findings and recommendations to the Commissioner of Customs and the Secretary of the Treasury. The Special Counsel also sends copies of the findings and recommendations to the officer or employee or the representative of that officer or employee.

§103.10 FEES FOR SERVICES.

(a) *In general.* (1) The fees prescribed in this section are for search and duplication and under no circumstances is there a fee for determining whether an exemption can or should be asserted, for deleting exempt matter being withheld from records to be furnished, or for monitoring a requester's inspection of records made available in this manner.

(2) Customs publications which are available for sale through the Government Printing Office are on the shelves of the reading rooms and similar public inspection facilities, but those publications are not available for sale at those facilities. Those publications may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, pages from those publications may be copied at the public inspection facilities in accordance with the schedule of fees set forth in paragraph (g) of this section.

(b) *When charged.* Unless charges are inapplicable, or are waived or reduced in accordance with paragraph (c) or (d) of this section, fees are charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records.

(c) *Services performed without charge—*(1) *Certain classes of records.* The Commissioner of Customs or an of the Commissioner's designees may determine, under the rulemaking procedures of 5 U.S.C. 553, which classes or records under their control may be provided to the public without charge, or at a reduced charge.

(2) *Records provided to government units.* Normally, in accordance with paragraph (d)(2)(ii) of this section, no charge is made for providing records to Federal, State, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(d) *Waiver or reduction of fees—*(1) *Records unavailable or exempt.* Fees may be waived or reduced at the discretion of the Customs officer who determines the availability of records, if the record is not found or is exempted from disclosure.

(2) *Request for waiver or reduction of fees.* Fees may be waived or reduced on a case by case basis in accordance with this paragraph

by the Customs officer who determines whether to release the record. A request for a waiver or reduction of fees must be in writing. The appropriate Customs officer shall waive or reduce a fee if the officer determines either that—

(i) The records are being requested by, or on behalf of, an individual who in writing, under penalty or perjury, demonstrates indigency to the satisfaction of the officer and that compliance with the request does not constitute an unreasonable burden on the United States Customs Service; or

(ii) A waiver or reduction of the fees is in the public interest because furnishing the information primarily benefits the general public.

(3) *Appeal from denial of request.* An appeal from a denial of a request for waiver or reduction of fees is decided under the criteria set forth in subparagraph (2) of this paragraph by the Director, Office of Regulations and Rulings. An appeal shall be in writing and mailed to the Director within 35 days of the denial of the initial request for waiver or reduction. An appeal under this paragraph is entitled to a prompt decision.

(e) *Avoidance of unexpected fees.* In order to protect a requester from unexpected fees, a requester is required to state in the request an agreement to pay the fees determined in accordance with paragraph (g) of this section or to state an acceptable upper limit on the cost of processing the request. If the fee for processing the request is estimated to exceed that limit, or if the requester has failed to state a limit and the cost is estimated to exceed \$50 and there is no decision to waive or reduce the fees, the appropriate Customs officer shall—

(1) Inform the requester of the estimated costs;

(2) Extend an offer to the requester to confer with Customs personnel in an attempt to reformulate the request in a manner which will reduce the fee and still meet the needs of the requester; and

(3) Inform the requester that the running of the time period within which a determination on the request must be made is suspended until the request is reformulated in manner to reduce the cost or until the requester pays or agrees to pay the estimated cost.

(f) *Form of payment.* (1) A requester shall pay by a check or money order that is payable to the order of the United States Customs Service.

(2) If the estimated cost exceeds \$50, the requester may be required to enter into a contract for the payment of actual costs, as determined in accordance with paragraph (g) of this section, which contract may provide for prepayment of the estimated costs in whole or in part.

(g) *Amount to be charged for specified services.* A fee for a service performed is imposed and collected as set forth in this paragraph. The

Commissioner of Customs or the Commissioner's designee may set an appropriate fee for any service not described below. These extraordinary fees are imposed and collected pursuant to 31 U.S.C. 483a, subject to the constraints imposed by 5 U.S.C. 552(a)(4)(A).

(1) *Duplication.* (i) The charge for photocopies per page up to 8½" × 14" is at the rate of \$0.10 each, except that no charge is imposed for copying 10 pages or less when less than one hour is spent in locating the records requested.

(ii) The charge for photographs, films and other materials is their actual cost. The United States Customs Service may furnish the records to be released to a private contractor for copying and charge the person requesting the records the actual cost of duplication charged by the private contractor. No fee is charged where the requester furnishes the supplies and equipment and makes the copies at the Government location.

(2) *Unpriced printed materials.* The charge for unpriced printed material, which is available at the location where requested and which does not require duplication for copies to be furnished, is at the rate of \$0.25 for each twenty-five pages or fraction thereof.

(3) *Search services.* The charge for services of personnel involved in locating records is \$5 for each hour or fraction thereof, except that no charge is imposed for a search of less than one hour. Where a computer search is required because of the nature of the records sought and the manner in which such records are stored, the fee is \$5 for each hour or fraction thereof of personnel time associated with the search plus the actual cost of extracting the stored information in the format in which it is normally produced. This actual cost of extracting information is based on computer time and supplies necessary to comply with the request.

(4) *Searches requiring travel or transportation.* The charge for transporting a record from one location to another, or for transporting a Customs officer or employee to the site of requested records when it is necessary to locate rather than examine the records, is the actual cost of the transportation.

§103.11 SPECIFIC CUSTOMS SERVICE RECORDS SUBJECT TO DISCLOSURE.

(a) *Administrative staff manuals and instructions.* Except as exempted by §103.12, all administrative staff manuals and instructions to staff that affect any member of the public, and indexes thereto, are available for public inspection and copying in the United States Customs Service public reference facilities (see §103.1), including the following:

Catalogue of Customs Forms.

Computer printout of precedent cases decided by the Office of Regulations and Rulings, Headquarters, United States Customs Service.

Customs Information Exchange Rulings and Rulings issued by the Office of Regulations and Rulings organized chronologically by year, with identifying data deleted pursuant to §§103.12 and 103.14.

Customs Simplification Act (C.S.A.) Series Letters and Index (identifying information deleted pursuant to §§ 103.12 and 103.14). Customs Statistical Manual.

Import Requirements on Articles Assembled Abroad from U.S. Components (Item 807.00, TSUS).

KWIC Index of United States Customs Service circulars letters, and supplementary monthly checklists.

Synopsis of Decisions of the Duty Assessment Process.

(b) *Other Customs Records.* In general, all other documents issued by the Secretary of the Treasury, the Commissioner of Customs, or other officers of the Department of the Treasury or of the United States Customs Service in matters administered by the United States Customs Service, if reasonably described, and unless exempted from disclosure under §103.12, are available. The classes of records of the United States Customs Service which may be made available under this paragraph upon written request submitted in accordance with the § 103.5 include, but are not limited to following:

(1) Records relating to—(i) Comments submitted by private parties (which are not considered to include foreign governments) in response to a published notice of proposed rulemaking and of proposed changes in tariff classification, unless the submitter states that the information is privileged or confidential, giving reasons therefor, and the Commissioner of Customs agrees that the information contained therein is exempt from disclosure under § 103.12;

(ii) Advisory committees on Customs matters;

(iii) Rosters of licensed customhouse brokers;

(iv) Names of individual licensed customhouse brokers;

(v) Names and titles of all Customs personnel;

(vi) Performance awards;

(vii) Suggestion awards;

(viii) The administration of and decisions concerning import quotas; and

(ix) Customs laboratory methods.

(2) Decisions concerning—(i) Matters arising under the Tariff Schedules of the United States (19 U.S.C. 1202);

(ii) Whether or not specific items, articles, or merchandise qualify for entry under the Trade Fair Act of 1959 (19 U.S.C. 1751 *et seq.*), and the disposition of articles previously entered under the Trade Fair Act; Customs participation and assistance at Trade Fairs;

(iii) The dutiable status of gifts pursuant to section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321);

(iv) The eligibility of vehicles used in international traffic pursuant

to section 332(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), and other instruments of international traffic generally for duty-free entry;

(v) Prohibition from entry of merchandise produced by convict, forced, or indentured labor (19 U.S.C. 1307);

(vi) The entry or valuation of merchandise;

(vii) Liens in cases arising under section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564);

(viii) Bills of lading, carriers' certificates, or rights in respect of merchandise, cases arising under section 483 or 484(c), (h), or (i), Tariff Act of 1930, as amended (19 U.S.C. 1483, 1484(c),(h), (i));

(ix) Trademarks, trade names, copyrights, patents, and related matters;

(x) Country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304);

(xi) Psittacine or other birds, bird feathers, bird skins, monkeys, dogs, cats, and other animals and pets prohibited entry or subject to restrictions and controls on entry;

(xii) Entry of articles admitted temporarily free of duty under bond as provided in schedule 8, part 5C, Tariff Schedules of the United States (19 U.S.C. 1202), and entry of articles admitted temporarily free of duty under A.T.A. Carnets, as provided in § 114.22(a) and (b) of this chapter;

(xiii) Tonnage taxes (regular, special, and discriminatory) and light money;

(xiv) The entry, clearance, and use of vessels and permits for them to proceed coastwise;

(xv) The regulation of vessels in the foreign, coastal, fishing, and other trades of the United States;

(xvi) The limitation of the use of foreign vessels in waters under the jurisdiction of the United States;

(xvii) Salvage operations by vessels within the territorial waters of the United States (46 U.S.C. 316);

(xviii) The assessment and collection of duties on equipment or repairs of vessels or aircraft under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), and the remission or refund of such duties;

(xix) Requirements for entry, clearance, and use of aircraft;

(xx) The arrival or departure and the use of motor vehicles, railway trains, or other vehicles;

(xxi) Adequacy of premises at Customs bonded warehouses and control of the merchandise stored therein;

(xxii) Use of protective Customs seals and labels; and

(xxiii) The itineraries of foreign vessels which had been submitted for an advisory ruling to determine whether the primary object

of a contemplated voyage would be considered to unlawful coastwise trade (see § 4.80a(d) of this chapter).

§ 103.12 EXEMPTIONS.

Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552(a) are not applicable to U.S. Customs Service records which relate to the following:

(a) *Matters kept secret pursuant to Executive Order.* Matters specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and which are, in fact, properly classified pursuant to such Executive Order (see 31 CFR Part 2).

(b) *Certain internal rules and procedures.* Information relating solely to the internal personnel rules and practices of an agency.

(c) *Matters exempt from disclosure by statute.* Information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(d) *Privileged or confidential information.* Trade secrets and commercial or financial information obtained from any person which is privileged or confidential.

(e) *Certain inter-agency or intra-agency correspondence.* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the agency.

(f) *Material involving personal privacy.* Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) *Certain investigatory records.* Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would—

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical security of law enforcement personnel.

§ 103.13 SEGREGABILITY OF RECORDS.

(a) *Reasonably segregable portions.* Where the record requested contains information which is exempt from disclosure under 5 U.S.C. 552(b) and section 103.12, the reasonably segregable portions of the record shall be made available to the requester. For purposes of this section, the term "reasonably segregable portions" means those portions of the record: (1) which are not exempt from disclosure by 5 U.S.C. 552(b) and section 103.12; (2) which, after deletion of the exempt material, still convey meaningful and nonmisleading information; and (3) from which it can reasonably be assumed that a skillful and knowledgeable person could not reconstruct the exempt portions.

(b) *Petitions by American manufacturers, producers, or wholesalers.* Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). See Part 175 of this chapter.

§ 103.14 INFORMATION ON VESSEL MANIFESTS AND SUMMARY STATISTICAL REPORTS.

(a) *Disclosure to members of the press.* Although the following classes of information are exempt from the requirement of disclosure under the provisions of § 103.12, accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) Of the information shown on inward manifests, only the name of the consignee, the general character of the commodity, the quantity (or value), name of vessel, and the country of dispatch shall be copied and published. When an inward manifest shows both quantity and

value of the commodity, either may be copied and published, but not both in any instance.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a Customs officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall be permitted to obtain information from, but not examine, vessel manifests, subject to the rules set forth in paragraphs (a) and (b) of this section. However, importers and exporters or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Suspension of disclosure.* (1) Inward manifest. Except as provided in §103.17, upon written application of a consignee or importer, access to the name of such consignee or importer, on an inward manifest will thereafter be refused.

(2) Outward manifest. If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Regional Commissioner for the Region in which the port of exportation is located.

(iv) Each certification will be valid for a period of two (2) years from the date of its submission to Customs.

(3) If any individual shall abuse the privilege granted him of examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

§ 103.15 SANCTIONS FOR IMPROPER ACTIONS BY CUSTOMS OFFICERS OR EMPLOYEES.

(a) The improper disclosure of the confidential information contained in Customs documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by

a Customs officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from the United States Customs Service, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Sanctions for improper denials of information by Customs officers or employees are set forth in § 103.9(c).

§ 103.16 INFORMATION CONCERNING FINES, PENALTIES, AND FORFEITURES CASES.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions), district directors of Customs and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate district director of Customs. Public disclosure of any other item of information concerning such cases, whether open or closed, shall only be made in conformance with the procedures provided in § 103.5.

§ 103.17 TESTIMONY OR THE PRODUCTION OF DOCUMENTS IN COURT.

(a) *General.* In answer to a legal process or demand from a court issued on behalf of the United States or an officer thereof, Customs officers or employees shall produce in court, and may testify with respect to, any official Customs papers or documents demanded which are in Customs custody. When the process or demand is issued on behalf of a party other than the United States, Customs officers or employees shall produce in court, and may testify with respect to, those papers and documents, but only to the extent that the party on whose behalf the papers or documents are demanded is permitted under these regulations to inspect or copy those papers or documents. An exception to the above two rules may be made only on the written order of the Commissioner of Customs or the Commissioner's designee. When requested, copies may be authenticated pursuant to the provisions of section 1733, title 28, United States Code.

(b) *Request of Customs Court.* Except as stated in § 103.12, nothing in this part precludes Customs officers or employees from producing in the United States Customs Court, any Customs papers or documents, in Customs custody, or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the

United States information in, and permitting inspection of, Customs papers and documents requested by such counsel, nor from testifying on behalf of the United States or otherwise assisting such counsel in the performance of official duties.

(c) *Subpoena or subpoena duces tecum.* Upon being served with a subpoena, or subpoena duces tecum from a court or court officer calling for testimony or the production of papers or documents in cases not covered by paragraph (a) or (b) of this section, or in cases where the testimony or documents desired would disclose matters the disclosure of which would be contrary to these regulations, the Customs officer involved shall refer the matter to Headquarters for instructions, with a report that specifically describes the testimony or documents desired. The Customs officer involved shall include in that report his or her opinion on whether the giving of the testimony or the furnishing of the documents would disclose information not permitted to be disclosed under these regulations. That officer also shall state in what particulars, if any, the disclosure of the information and work incidental to that disclosure would interfere with the orderly conduct of Customs business. If instructions are not received prior to the date set for appearance or production of documents, or if the Commissioner of Customs or the Commissioner's designee declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the Customs officer or employee whose testimony is requested, the Customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for the refusal. If the matter has not already been referred to Headquarters for instructions, the Customs officer or employee shall advise the court or officer that it will be so referred.

(d) *In camera inspection of records.* Nothing in this section authorizes Customs officers or employees to withhold records from a court, pursuant to its order, for *in camera* inspection to determine the propriety of claimed exemptions to disclosure.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (5 U.S.C. 301; 19 U.S.C. 66, 1624))

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE
§ 152.42 [AMENDED]

Section 152.42(b) of the Customs Regulations (19 CFR 152.42(b)) is amended by substituting "103.12(d)" for "103.7(d) in the last sentence.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

**PART 175—PETITIONS BY AMERICAN MANUFACTURERS, PRODUCERS,
AND WHOLESALERS**

§ 175.21 [AMENDED]

Section 175.21(b) of the Customs Regulations (19 CFR 175.21(b)) is amended by substituting "103.11(b)" for "103.8(b)" and by substitution "103.12(d)" for "103.10".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PARALLEL REFERENCE TABLE

(This table shows the relation of sections in new Part 103 to 19 CFR Part 103)

<i>Proposed section</i>	<i>19 CFR section</i>
103.0	103.0
103.1	103.1
103.2(a)	New.
103.2(b)	New.
103.3(a)	New.
103.3(b)	New.
103.4(a)	New.
103.4(b)	New.
103.4(c)	New.
103.4(d)	103.4(b); new.
103.4(e)	New.
103.5(a)	103.2 (b), (c), and (d); new.
103.5(b)	103.2(e); new.
103.5(c)	103.2 (b) and (c); new.
103.5(d)	103.2 (a); new.
103.5(e)	103.2 (d); new.
103.5(f)	New.
103.5(g)	New.
103.5(h)	103.6(c).
103.6(a)	103.2(f), 103.3(a).
103.6(b)	New.
103.6(c)	New.
103.6(d)	New.
103.6(e)	103.4(d); new.
103.7(a)	103.5(a); new.
103.7(b)	New.
103.7(c)	103.5 (b) and (c); new.
103.8(a)	New.
103.8(b)	New.
103.9(a)	New.
103.9(b)	103.4(c)(2); new.
103.9(c)	New.

PARALLEL REFERENCE TABLE—Continued

<i>Proposed section</i>	<i>19 CFR section</i>
103.10(a)-----	New.
103.10(b)-----	103.9(b); new.
103.10(c)-----	103.9(c); new.
103.10(d)-----	New.
103.10(e)-----	New.
103.10(f)-----	New.
103.10(g)-----	103.9(b); new.
103.11(a)-----	103.7.
103.11(b)-----	103.8 (a) and (b).
103.12(a)-----	103.10(a); new.
103.12(b)-----	103.10(b); new.
103.12(c)-----	New.
103.12(d)-----	103.10(d).
103.12(e)-----	103.10(e).
103.12(f)-----	103.10(f).
103.12(g)-----	103.10(g); new.
103.13(a)-----	New.
103.13(b)-----	New.
103.14(a)-----	103.11(a).
103.14(b)-----	103.11(b).
103.14(c)-----	103.11(c).
103.14(d)-----	103.11(d).
103.15(a)-----	103.12.
103.15(b)-----	New.
103.16-----	103.13.
103.17(a)-----	103.14(a).
103.17(b)-----	103.14(b).
103.17(c)-----	103.14(c).
103.17(d)-----	New.

PARALLEL REFERENCE TABLE

(This table shows the relations of the old sections to the new sections in Part 103)

<i>Old</i>	<i>New</i>
103.0-----	103.0.
103.1-----	103.1.
103.2(a)-----	103.5(d); 103.6(a).
103.2(b)-(d)-----	103.5 (a), (c), (e).
103.2(e)-----	103.5(b).
103.2(f)-----	103.6(a).
103.4(b)-----	103.4(d).
103.4(c)(2)-----	103.9(b).

PARALLEL REFERENCE TABLE—Continued

103.4(d)-----	103.6(e).
103.5(a)-----	103.7(a).
103.5 (b), (c)-----	103.7(c).
103.6 (a), (b)-----	Deleted.
103.6(c)-----	103.5(h).
103.7-----	103.11(a).
103.8 (a), (b)-----	103.11(b).
103.9(b)-----	103.10(b); 103.10(g).
103.9(c)-----	103.10(c).
103.10(a)-----	103.12(a).
103.10(b)-----	103.12(b).
103.10(d)-----	103.12(d).
103.10(e)-----	103.12(e).
103.10(f)-----	103.12(f).
103.10(g)-----	103.12(g).
103.11(a)-----	103.14(a).
103.11(b)-----	103.14(b).
103.11(c)-----	103.14(c).
103.11(d)-----	103.14(d).
103.12-----	103.15(a).
103.13-----	103.16.
103.14(a)–(c)-----	103.17(a)–(c).

[Published in the Federal Register, June 24, 1981 (46 FR 32564)]

(T.D. 81-169)

Bonds

Approval of carrier's bond, Customs Form 3587; amendment of T.D. 80-278

T.D. 80-278 relating to the temporary approval of the Carrier's Bond of the following principal is hereby amended as necessary to show that such bond has been permanently approved as noted below.

Dated: June 12, 1981.

Principal:

B & W Express----- *Effective date
of permanent
authority* Apr. 30, 1981

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81-170) 19 CFR Part 101

Amendments to the Customs Regulations Relating to the Field Organization of the Customs Service

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This notice changes the field organization of the Customs Service by establishing a new port of entry at Austin, Texas, in the Dallas/Fort Worth, Texas, Customs district (Region VI). To accommodate the new Austin port, this notice also revises the Dallas/Fort Worth district limits. The changes will enable Customs to keep pace with the significant increase in Customs-related activities which has occurred in central Texas during the past decade.

EFFECTIVE DATE: 7-23-81.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Austin, the State Capital of Texas, rapidly is becoming the center of international trade in central Texas. During the last decade, the area attracted many new manufacturing companies, including major electronics firms, high technology businesses, and other leading corporations producing a variety of products for distribution in markets in Europe, the Middle East, and Central and South America. In the last 5 years, the volume of merchandise imported into Austin quadrupled; the volume of merchandise exported more than tripled.

Presently, approximately 42 percent of imported merchandise destined for Austin is entered through the Customs port of entry at Houston, Texas, 162 miles away. Another 20 percent is entered through the Customs port of entry at San Antonio, Texas, 77 miles away. Transporting merchandise from these locations to Austin substantially increases distribution and transportation costs and delays delivery of the merchandise to its ultimate destination.

Following a review of Customs activity in the area, Customs determined that establishing a Customs port of entry at Austin would: (1) reduce distribution and transportation costs and reduce the travel time for imported goods destined for Austin; (2) provide the basis for initiating scheduled international flights between Austin and foreign cities; and (3) enable Customs to obtain more efficient

use of its personnel, facilities, and resources in providing service to importers in the Austin area.

Accordingly, to keep pace with the expanding needs of Customs-related activities in central Texas and to provide better service to carriers, importers, and the public, Customs published a notice in the Federal Register on March 18, 1981 (46 FR 17228), proposing to establish a new port of entry at Austin, Texas, in the Dallas/Fort Worth, Texas, Customs district (Region VI).

To accommodate the new Austin port of entry in the Dallas/Fort Worth district, the notice also proposed to revise the Dallas/Fort Worth district limits to include the State of Oklahoma, and those parts of the State of Texas lying north of lat. 32° N., and within the area north of lat. 30° N., west of 97° W. long. and east of 99° W. long.

Only one comment was received in response to the notice. The commenter opposes the change because he believes that Customs should not be establishing new ports of entry anywhere at this time because it would increase operational costs to the Customs Service at a time when governmental spending restraints are required. He also suggests that Customs set forth minimum criteria for the establishment and maintenance of ports of entry.

One aspect of Customs mission is to provide service to the public when and where it is required. The establishment of new ports of entry in various locations throughout the country is a necessary response to the public demand for increased Customs service. Further, Customs does have minimum workload and facility standards for the establishment of new ports of entry which are applied to prevent the unjustified proliferation of new ports. Prior to establishing ports of entry, Customs carefully reviews the data submitted in support of each application to verify that it meets the criteria. The Austin application was scrutinized and an independent Customs analysis of the potential Customs workload at Austin verified that it met Customs standards for the establishment of a new port of entry.

Accordingly, Customs has determined to adopt the changes as proposed.

CHANGES IN THE CUSTOMS FIELD ORGANIZATION

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Ccmp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (46 FR 9336), a new Customs port of entry is established at Austin, Texas, in the Dallas/Fort Worth, Texas, Customs district. The geographical boundaries of the Austin port of entry encompass

all of the territory within the corporate boundaries of the city of Austin, Texas. In addition, the limits of the Dallas/Fort Worth district are revised to include the State of Oklahoma, and those parts of the State of Texas lying north of lat. 32° N., and within the area north of lat. 30° N., west of 97° W. long. and east of 99° W. long.

AMENDMENTS TO THE REGULATIONS

To reflect these changes, section 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by: (1) adding "Austin, Texas (T.D. 81-170)" following "Amarillo, Texas (T.D. 75-129)" in the list of ports of entry in the Dallas/Fort Worth district, and (2) changing the description of the Dallas/Fort Worth district limits to read "The State of Oklahoma, and those parts of the State of Texas lying north of lat. 32° N., and within the area north of lat. 30° N., west of 97° W. long. and east of 99° W. long."

EXECUTIVE ORDER 12291

Because this will not result in a "major rule" as defined in section 1(b) of Executive Order 12291, the regulatory impact analysis and review prescribed by section 3 of the Executive Order is not required.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (P.L. 96-354, 5 U.S.C. 601 et. seq.), the Secretary of the Treasury has determined that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, these regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in central Texas, it is not expected to be significant because the establishment of Customs ports of entry in other locations has not had a significant economic impact upon substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

DRAFTING INFORMATION

The principal author of this document was Lawrence P. Dunham, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: June 9, 1981.

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. These copies will be made available at a cost to the requester of \$0.10 per page. However, the Customs Service will waive this charge if the total number of pages copied is ten or less.

Decisions listed in earlier issues of the Customs Bulletin, through February 2, 1981 are available in microfiche format at a cost of \$30.99** (\$0.15 per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: June 17, 1981.

B. JAMES FRITZ,
Director,
Regulations Control and Disclosure Law Division.

Date of decision	File No.	Issue
05-14-81	105080	Vessels: A foreign built, U.S.-flag vessel may take fish beyond the 200 mile fishery conservation zone but is prohibited from landing the fish in the U.S.

Date of decision	File No.	Issue
05-22-81	105085	Vessels: denial of clearance of foreign vessels due to lack register or certificate of nationality
05-20-81	105099	Instruments of International Traffic: environmental data buoys with components and spare parts
05-15-81	105160	Vessels: cargo unladen at point in U.S. other than point of lading constitutes a violation of 46 U.S.C. 883
05-27-81	105166	Vessels: passengers transported by a foreign-flag vessel, on cruise, between ports or places in the U.S., is not coastwise transportation in violation of 46 U.S.C. 289
05-22-81	105169	Vessels: material of no value transported by a foreign built vessel for disposal is not a violation of the coastwise laws: 46 U.S.C. 883
05-28-81	055115	Classification: synthetic woven textiles
03-04-81	061716	Classification: refractories (531.27, 531.39)
03-10-81	061968	Classification: ceramic lamps (534.87, 534.94, 688.40, 772.15)
05-12-81	065716	Classification: ladies shoes (700.60)
03-27-81	067139	Classification: batik wall hangings (366.79, 765.25)
03-27-81	067146	Classification: plastic trays and lipstick material comprising cosmetic kits (800.00, 807.00)
03-27-81	067147	Classification: hanging cloth scenery (386.04, 851.15)
03-26-81	067165	Classification: seat back and cushion assemblies (727.06)
05-11-81	068016	Classification: word puzzle books (735.20)
05-08-81	542351	Classification: dutiability of royalty payments
05-08-81	542422	Value: whether a discount based on the number of units initially ordered is part of the freely offered price for purposes of determining statutory export value
03-26-81	800119	Classification: pharmaceutical intermediate (413.51)
04-14-81	800161	Classification: fiberglass items (770.10)
04-14-81	800197	Classification: grain aeration system components (389.62, 661.06, 657.25, 666.00, 680.95, 774.55, 870.40)
05-05-81	800237	Classification: DECA concentrate (407.16)
04-14-81	800262	Classification: toy figure (737.95)
04-28-81	800293	Classification: rubber soled boat shoes (700.60, 700.63, 700.71)
05-08-81	800314	Classification: grain dryer kit (666.00, 685.90, 870.40)
04-15-81	800345	Classification: jolly chimp toy figure (737.35)
04-20-81	800352	Classification: forging billets for stabilizers (606.69, 664.08)
04-21-81	800373	Classification: plastic air etcher (772.15)
04-14-81	800377	Classification: oxygen absorbers used in food and textile preservation (657.25)
04-14-81	800379	Classification: zipper tape (347.70)
04-28-81	800391	Classification: prepared culture plates (799.00)
04-14-81	800393	Classification: ladies shirt (382.33)
04-29-81	800397	Classification: microcomputer organ (737.60)
04-14-81	800407	Classification: wallet components of man-made fibers (386.09, 774.55)

Date of decision	File No.	Issue
04-15-81	800412	Classification: felt tip marking pens and color changer (760.15)
04-15-81	800431	Classification: imitation and synthetic gemstones (520.71, 741.35)
04-20-81	800432	Classification: child's canvas shoe with cupped sole (700.64, 700.67)
04-15-81	800434	Classification: woman's shirt (382.81)
04-15-81	800437	Classification: welded steel chain (652.18)
04-15-81	800440	Classification: water distillers (870.40)
04-15-81	800445	Classification: women's cotton woven blouse (382.33)
05-08-81	800446	Classification: swivel-type mining shovel (664.07, 692.35)
04-15-81	800450	Classification: musical toys (737.80)
04-29-81	800456	Classification: knock-down furniture (727.35, 727.40)
04-17-81	800458	Classification: windsurfers (696.05)
05-11-81	800465	Classification: toy plastic robot (682.95, 737.95)
04-21-81	800466	Classification: woven cotton denim jeans (380.00 382.00)
05-11-81	800467	Classification: four-wheel-drive tractor shovels (664.08, 870.40)
04-17-81	800469	Classification: remote controlled model vehicles and radio transmitters (685.60, 737.15)
04-17-81	800470	Classification: remote control model racing car (685.60, 737.15)
04-20-81	800473	Classification: wooden flowers (748.21)
04-27-81	800478	Classification: flour mix (183.01)
05-11-81	800479	Classification: camping tents (355.25)
04-29-81	800483	Classification: embossed aluminum sheets (618.25)
04-29-81	800485	Classification: water scooter (696.05)
04-29-81	800488	Classification: polypropylene ribbon (774.55)
04-21-81	800490	Classification: cold heading steel wire (606.88, 609.41)
04-21-81	800491	Classification: asbestos gloves (705.90)
05-11-81	800492	Classification: plastic sandals (700.51, 700.52, 700.53, 700.60)
04-29-81	800493	Classification: laminated plastic sheets (770.05)
04-29-81	800499	Classification: steel outlet (666.00)
05-11-81	800501	Classification: fireplace chimney damper (642.14, 657.09, 657.25)
05-08-81	800507	Classification: block mate toy (737.40)
04-29-81	800508	Classification: woven cotton denim pocket swatches (380.39)
05-11-81	800510	Classification: ladies knit pullover sweater (382.02, 382.54, 382.58)
05-11-81	800511	Classification: ladies knit man-made fiber sweater (382.04, 382.78)
05-08-81	800518	Classification: wood home packages (207.00)
05-11-81	800519	Classification: cap and visor caps (703.05, 382.78, 382.04)
05-05-81	800531	Classification: canvas uppered shoes (700.59, 700.67)

Date of decision	File No.	Issue
04-27-81	800538	Classification: cotton demin jeans (380.39)
05-05-81	800541	Classification: styrene oxide (403.68)
05-11-81	800546	Classification: sun visor with goggles (708.43, 708.45, 772.30, 774.55)
05-11-81	800547	Classification: phenoxy resin (408.88)
05-11-81	800556	Classification: peat moss preparation machines (662.20, 664.08, 664.00, 692.60, 678.20)
05-08-81	800558	Classification: quick release hook (678.50)
04-27-81	800561	Classification: sunflower seed paste or butter (183.05)
05-05-81	800564	Classification: molded industrial boot (700.51, 700.53)
04-29-81	800569	Classification: curbless dome roof skylight (770.10)
05-11-81	800575	Classification: tampon case (774.55)
05-12-81	800577	Classification: hot dog warmer (653.45, 684.20)
05-12-81	800578	Classification: trailer articulated trucks (692.02, 945.69)
05-12-81	800579	Classification: hand-operated stapling fastener and galvanized steel staples (646.20, 651.47)
05-12-81	800580	Classification: macadamia nuts (145.58)
05-08-81	800581	Classification: rotary cleaning machines (662.50, 678.50, 660.97)
05-08-81	800583	Classification: sun tanning apparatus (688.45)
05-08-81	800584	Classification: gas mask (709.45)
05-12-81	800585	Classification: cotton fabric (326.23)
05-08-81	800589	Classification: modular cleaning units and degreaser tanks (678.50)
05-12-81	800596	Classification: scale model die cast trucks (737.07)

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1263)

No. 80-36. UNITED STATES *v.* PHILIPP OVERSEAS, INC.

1. CLASSIFICATION 609.82—HOT ROLLED ALLOY STEEL ANGLES.

Judgment of United States Court of International Trade, ⁸⁴ Cust. Ct. 200, C.D. 4859, 496 F. Supp. 273 (1980), holding that hot-rolled stainless steel angles which were annealed and pickled during manufacturing were properly classified under TSUS item 609.82 as hot-rolled alloy steel angles, "Not drilled, not punched, and not otherwise advanced," as claimed, and not under TSUS item 609.89 as "otherwise advanced," as classified by the Government, affirmed.

2. ID—ADVANCEMENT OF ARTICLE.

While no step in the creation of an article can at the same time be an advancement of that article, threshold question must always be what the "article" is.

3. ID.

This case is not one where it must be determined whether processes used by manufacturer are merely to make "commercially acceptable" article for TSUS Schedule 6, part 2, headnote 1, is neither incomplete nor ambiguous with regard to those processes.

4. DOCTRINE OF "EJUSDEM GENERIS."

Application of the doctrine of *eiusdem generis* precludes classification of imported stainless steel angles as "Drilled, punched, or otherwise advanced," for chemical processes of annealing and pickling are not *eiusdem generis* with mechanical processes of drilling and punching.

THE UNITED STATES, APPELLANT v. PHILIPP OVERSEAS, INC., APPELLEE

No. 80-36

United States Court of Customs and Patent Appeals, June 11, 1981

Appeal From United States Customs Court, C.A.D. No. 1263.

[Affirmed]

Thomas S. Martin, Acting Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman*, Atty. in charge, *John J. Mahon*, counsel for appellant.

E. Thomas Horey, *John J. Galvin*, attorneys for appellee.

[Oral argument on May 4, 1981 by *John J. Mahon* for appellant and *E. Thomas Honey* for appellee.]

Before MARKEY, Chief Judge, RICH, BALDWIN, MILLER, and NIES, Associate Judges.

RICH, Judge.

[1] This appeal is from the judgment of the United States Customs Court (now the United States Court of International Trade) in *Philipp Overseas, Inc. v. United States*, 84 Cust. Ct. 200, C.D. 4859, 496 F. Supp. 273 (1980), sustaining appellee's complaint and holding that hot rolled stainless steel angles, which were annealed and pickled during the manufacturing process, are properly classified under Item 609.82 of the Tariff Schedules of the United States (TSUS), as modified by T.D. 68-9, as hot rolled alloy steel angles, not drilled, not punched, and not otherwise advanced. The government had classified the imported angles under Item 609.86, TSUS, as modified by T.D. 68-9, contending that although the angles were not drilled or punched, they were "otherwise advanced" because they were annealed and pickled in the course of their production. We affirm.

BACKGROUND

The imported goods are stainless steel angles. They are formed by "hot rolling" a steel billet, cooling it, annealing it (reheat to 1,000° C and cool by quenching in water), straightening (to remove waves created by the rolling process), and "pickling" (dipping the angles into acid solution). The purpose of annealing is to create a uniform and predictable range of physical characteristics in the metal, including corrosion resistance, by uniformly redistributing its chromium content (which had previously been localized after hot rolling in the form of chromium carbide). The pickling step removes the crust or scale which is formed in annealing, insuring that the chromium now located over the entire surface of the metal can combine with oxygen, giving the metal a uniform layer of chromium oxide, which in turn makes it corrosion resistant.

The angles were assessed a duty at 8.5% ad valorum pursuant to classification under 609.86, TSUS, plus additional duties on their

chromium and molybdenum content under Items 607.01 and 607.02, respectively, pursuant to Schedule 6, Part 2, Subpart B, headnote 4. Appellee claimed the proper duty to be 0.1 cent/lb. plus 2% ad valorum under 609.82, TSUS. The additional duties on the chromium and molybdenum content were not contested.

STATUTORY PROVISIONS

TARIFF SCHEDULES OF THE UNITED STATES

SCHEDULE 6—METALS AND METAL PRODUCTS

* * * * *

PART 2.—METALS, THEIR ALLOYS, AND THEIR BASIC SHAPES AND FORMS

Part 2 headnotes:

1. This part covers precious metals and base metals (including such metals when they are chemically pure), their alloys, and their so-called basic shapes and forms, and, in addition, covers metal waste and scrap. *Unless the context requires otherwise*, the provisions of this part apply to the products described by whatever process made (i.e., whether rolled, forged, drawn, extruded, cast or sintered) and whether or not such products have been subjected to treatments to improve the properties or appearance of the metals or to protect them against rusting, corrosion or other deterioration. These treatments include annealing, tempering, case-hardening and similar heat-treatment or nitriding; descaling, pickling, scraping, scalping and other processes to remove oxidation scale and crust; * * *. [Emphasis ours.]

* * * * *

SUBPART B.—IRON OR STEEL

* * * * *

Subpart B headnotes:

* * * * *

3. Forms and Conditions of Iron or Steel

* * * * *

(j) *Angles, shapes, and sections:*
Products which do not conform completely to the respective specifications set forth herein for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products.

* * * * *

Angles, shapes, and sections, all the foregoing, of iron or steel, hot rolled, forged, extruded, or drawn, or cold formed or cold finished, whether or not

drilled, punched, or otherwise advanced; sheet piling of iron or steel;

Angles, shapes, and sections; Hot rolled; or, cold formed and weighing over 0.29 pound per linear foot:

Not drilled, not punched, and not otherwise advanced:

* * * * *

[Claimed]
609.82

Alloy iron or steel. 0.1 cents per lb. + 2% ad val. + additional duties (see headnote 4)

Drilled, punched or otherwise advanced:

* * * * *

[Classified]
609.86

Alloy iron or steel. 8.5% ad val. + additional duties (see headnote 4)

ISSUE

The issue is whether the annealing and pickling processes, which are expressly allowed by headnote 1, "unless the context requires otherwise," exclude the imported angles from classification under Item 609.82 by reason of the language "not otherwise advanced" in the superior heading.

OPINION BELOW

The Customs Court stated it to be

* * * well settled that no step in the creation of an article is at the same time an "advancement" of the article. *United States v. Baron Tube Co. et al.*, 47 CCPA 69, 71, C.A.D. 730 (1960); *Commercial Shearing & Stamping Company v. United States*, (Guadalupe Industrial Supply Company, Inc., Party-in-Interest), 65 Cust. Ct. 91, 105, C.D. 4060, 317 F. Supp. 750 (1970), *aff'd*, 59 CCPA 203, C.A.D. 1067, 464 F. 2d 1048 (1972). Moreover, "manipulations after rolling, incident to making the rolled shape merchantable and fit for shipment, do not constitute

'advance' within the congressional intent". *American Mannex Corp. v. United States*, 56 Cust. Ct. 31, 36, C.D. 2608 (1966).

Since the angles were intended to be corrosion resistant, and *commercially acceptable* angles could not be produced without annealing and pickling, the court agreed with appellee that the imported angles were not "otherwise advanced" within the meaning of the heading superior to Item 609.86. It further noted that the government's own witness indicated that "he had never encountered a single order for nonannealed and nonpickled stainless steel angles."

The court also applied the doctrine of *ejusdem generis*, "where particular words of description are followed by general terms, the latter refer only to things of a like class with those particularly described," to reach the same result. "Otherwise advanced" in the statute is preceded by the words "drilled" and punched." Stating that annealing and pickling are not *ejusdem generis* with drilling and punching, the court held that the presumption of correctness of classification had been overcome and that the proper classification was under Item 609.82 as alleged by appellee.

ARGUMENTS ON APPEAL

The government argues that Items 609.86 and 609.82 provide for angles of alloy iron or steel. They do not require the angles to be stainless steel, the interpretation it alleges was given by the court below. In support of this argument, the government notes that other headnotes demonstrate that "stainless steel" is only one of many grades of steel that fall under the broader term, "alloy iron or steel."* Thus, even if all stainless steels required annealing or pickling or both to be commercially acceptable, that would have no bearing on whether those processes are necessary for these imports to be "angles * * * of alloy iron or steel" under either Item 609.86 or 609.82.

The government further argues that, in any event, several witnesses have testified that many angles of "alloy iron or steel" are sold hot rolled as rolled without either annealing or pickling. Thus, it is stated, it is clear that annealing or pickling or both are not necessary to produce or sell angles of alloy iron or steel, and that "advanced" must be construed in terms of further processing beyond the minimum required to create the article, i.e., hot rolling, and not in terms of whether the process renders the article commercially acceptable. Appellant states that the court itself noted that annealing and pickling are "not incidental to the rolling" operation and

*Schedule 6, Part 2, Subpart B, headnotes 2(h)(ii) and 2(h)(iv).

that, despite this, it erroneously referred to non-annealed and non-pickled angles as "semifinished."

Finally, the government argues that application of the doctrine of *ejusdem generis* is unwarranted, its use being reserved for those cases where the legislative intent is in doubt or ambiguous. In proposing that the meaning of the language in the heading superior to 609.86 is clear, the government repeats much of its earlier argument.

Appellee agrees with the reasoning of the lower court. Among other things, it states that the government's argument that the angles should be considered "otherwise advanced" since annealing and pickling are unnecessary to produce certain types of steel angles ignores the fact that the specific types of alloy steel of which the angles were composed, stainless steel types 304 and 316, require annealing and pickling to create a commercially acceptable product. The processes in issue, it is argued, cannot be both steps in creation and advancement.

OPINION

[2] The lower court stated, as previously noted, that no step in the creation of an *article* can at the same time be an advancement of that *article*. The question to be resolved, therefore, is whether that "article" is an [angle] *** of alloy iron or steel" hot rolled as rolled, as the government argues, or a stainless steel angle which conforms to the pickling and annealing requirements of stainless steel types 304 and 316, as appellee asserts.

Other than for the proposition of law for which it was cited by the lower court, the case of *United States v. Baron Tube Co.*, *supra*, is not particularly instructive. Baron Tube had imported steel tubes manufactured by (1) hot rolling steel strips to cylindrical shapes with their longitudinal edges abutting in an open seam, (2) closing that open seam with a weld, and (3) removing the rib resulting from the weld. The imports were classified under a section which laid a duty upon "lap-welded, butt-welded, seamed, or jointed iron or steel tubes, pipes, flues, and stays ***." Baron Tube claimed, and the Customs Court agreed, that the proper duty was found in a section relating to certain structural shapes (not specifically referencing tubes) and "all other structural shapes of iron or steel" which are not advanced beyond "hammering, rolling, or casting." In reversing the decision of the Customs Court, this court stated that "the tubes here are not structural shapes until processing beyond 'rolling, hammering, or casting' has been completed." Thus, although the court noted that "No step required for the creation of a structural shape *** can, at the same time be an advancement of a structural shape," it held that the tubes when rolled did not possess the physical properties required to qualify them

as structural shapes. This, however, does not help us determine what comprises an angle of "alloy iron or steel."

The lower court also stated, regarding "commercial acceptability," that, "manipulations after rolling, incident to making the rolled shape merchantable and fit for shipment, do not constitute 'advance' within the congressional intent," citing *American Mannex Corp. v. United States*, *supra*, and *E. Dillingham, Inc. v. United States*, 61 Cust. Ct. 33, C.D. 3522 (1968). Those cases dealt with the removal of useless or dangerous excrescences from rolled steel oil well casings, *American Mannex*, and from axe head forgings, *E. Dillingham*. The reasoning behind those decisions was that the cutting or grinding of the excrescences were steps required in the creation of the articles involved—to make them merchantable and fit for shipment—and were thus a part of the rolling and forging process. *Commercial Shearing & Stamping Co. v. United States*, *supra* at 105, 317 F. Supp. at 760.

The next question we must address in deciding what "article" we are dealing with, therefore, is whether the steps of annealing and pickling are required to make the imported "angles * * * of alloy iron or steel" merchantable, it being clear that the steps are not required to make the angles "fit for shipment." [3] This case, however, does not present the type of situation found in *American Mannex* and *E. Dillingham*,—whether the excision of useless or dangerous excrescences constitutes "advancement"—for the headnote discussion of "basic shapes and forms" of metals and their alloys is neither incomplete nor ambiguous with regard to annealing and pickling, and, therefore, needs no modification through discussion of what is a "commercially acceptable" angle. Accordingly, we agree with the government that an angle of "alloy iron or steel" should be interpreted to mean just that, an angle of *any* alloy iron or steel, since headnote 1, *supra*, refers to alloy iron or steel products "whether or not" they have been otherwise improved by annealing, pickling and the like.

[4] We do, however, on the basis of *ejusdem generis*, conclude that it would be stretching the matter to hold that even though headnote 1 expressly allows annealing and pickling, "Drilled, punched, or otherwise advanced" in the heading superior to Item 609.86 modifies that allowance pursuant to the phrase in headnote 1, "Unless the context requires otherwise." Drilling and punching are not *ejusdem generis* with annealing and pickling, and we therefore hold that the context of the heading superior to Item 609.86 is not one which "requires otherwise." The decision of the lower court is *affirmed*.

AFFIRMED.

United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Nils A. Boe

Senior Judge

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 81-50)

NIPPON KOGAKU (USA), INC., PLAINTIFF *v.* THE UNITED STATES,
DEFENDANT

Court No. 76-2-00521

OPHTHALMIC INSTRUMENTS

An instrument consisting of an observation system providing a magnified image of the object viewed and a slit-lamp illumination source, used by ophthalmologists and optometrists to assist in the examination as well as the diagnosis and treatment of abnormalities

or diseases of the eye, is properly classified as an ophthalmic instrument under item 709.05, TSUS, and not as a compound optical microscope under item 708.73, TSUS.

[Defendant's motion for summary judgment granted, plaintiff's cross-motion for summary judgment denied.]

(Decided June 4, 1981)

Serko & Simon (Joel K. Simon on the brief) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Jerry P. Wiskin* on the brief), for the defendant.

BOE, Judge: The subject merchandise in the above-captioned action, described in the special customs invoice as a "ZOOM PHOTO SLIT-LAMP MICROSCOPE, BASIC UNIT," was imported from Japan and entered at New York in July 1972 and January 1975. Upon liquidation the subject merchandise was classified under item 709.05, TSUS, providing:

SCHEDULE 7, PART 2, SUBPART B

Medical, dental, surgical and veterinary instruments and apparatus (including electro-medical apparatus and ophthalmic instruments), and parts thereof:

**Optical instruments and appliances,
and parts thereof:**

Mirrors and reflectors
Binocular loupes for eye ex-

709.05 Other----- 25% ad val.

The plaintiff contests the liquidated classification, claiming that the imported merchandise is properly classifiable under item 708.73, providing:

SCHEDULE 7, PART 2, SUBPART A

Compound optical microscopes; electron, proton, and similar microscopes and diffraction apparatus; all the foregoing whether or not provided with means for photographing or projecting the image; frames and mountings for the foregoing articles, and parts of such frames and mountings:

Compound optical microscopes:

Not provided with means for
photographing or projecting
the image:

708.73 Valued over \$50 each----- 22.5% ad val.

The subject merchandise is an optical instrument used by ophthalmologists and optometrists to assist in the examination and the diagnosis of abnormalities or diseases of the eye.

The principal components of the imported merchandise are (1) the "main unit," (2) a cross-slide table which contains the power supply and to which the main unit is attached by a swivel arm and (3) a chin rest assembly permitting the patient's head to be placed in the proper position for an eye examination. The "main unit" consists of two interconnected systems: (a) an observation system employing twin objective lenses which provide a magnified image of the object viewed and twin eyepieces which further magnify the image, and (b) a slit-lamp system which directs a beam of light into the eye thereby sectioning the eye and permitting a view of various portions thereof, such as—the cornea, vitreous humor and aqueous humor.

The thrust of plaintiff's argument is that in construction and operation, the subject merchandise is a compound optical microscope, properly classifiable under item 708.73, TSUS, and, consequently, specifically excluded from classification as an ophthalmic instrument under item 709.05, TSUS by virtue of headnote 1(ii) of Schedule 7, part 2, subpart B, providing:

Subpart B headnote:

1. This subpart does not cover—

* * * * *
(ii) spectacles, lorgnettes, goggles and similar articles; microscopes and diffraction apparatus (see subpart A of this part); [Emphasis supplied.]

For the reasons hereinafter stated, this court concludes that the subject merchandise is not a compound optical microscope within the meaning of the tariff schedules, and, therefore, not properly classifiable under item 708.73, TSUS, as claimed by plaintiff.

Tariff provisions are presumed to have been framed so as to classify articles according to the general usage and denomination of the trade of which they are a part. *Nylos Trading Co. v. United States*, 37 CCPA 71, C.A.D. 422 (1940). In determining the common and/or commercial meaning of tariff terms, the court may be aided by the evidence submitted as well as by independent examination of standard dictionaries and scientific authorities. Webster's Third New International Dictionary 1429 (1966) provides this definition of "microscopes":

microscope . . . 1: an optical instrument consisting of a lens or combination of lenses for making enlarged images of minute objects;

A "compound microscope" is defined as follows:

compound microscope: a microscope consisting of an objective and an eyepiece mounted in a drawtube and focused by means of screw arrangements [At 467.]

Supplementing these very general descriptions of the terms "microscope" and "compound microscope," competent evidence has been submitted that in commercial and trade usage, the term "compound optical microscope" does not include the subject merchandise.

The evidence submitted by affidavit and deposition establishes that the subject merchandise and instruments manufactured by other companies, similar in purpose, function and description, are marketed in the United States as ophthalmic instruments, whereas "compound microscopes" are marketed as "microscopes." It likewise appears without contradiction that the industry, as well as ophthalmologists and optometrists, principal users of the article, know and refer to it as a slit-lamp microscope or a slit-lamp, not as a "compound microscope." Vilardi Deposition of May 15, 1980 at 8-9; Bannon's Affidavit at ¶¶ 8-10, 12-14; Tackaberry's Affidavit at ¶¶ 11-12, 14-17.

In light of the commercial and trade designation of the subject merchandise as contrasted with the generalized dictionary definition of the term "compound microscope," the use of legislative history and extrinsic aids is deemed proper and warranted to ascertain the legislative intent embodied in the tariff schedule providing for "compound optical microscopes." See *United States v. Durst Mfg. Co.*, 46 CCPA 74, C.A.D. 700 (1959).

The predecessor statutory provisions to item 709.05, TSUS, and item 708.73, TSUS, were paragraphs 228(a) and 228(b) of the Tariff Act of 1930, respectively providing:¹

PAR. 228. (a). Spectrographs, spectrometers, spectroscopes, refractometers, saccharimeters, colorimeters, prism-binoculars, cathetometers, interferometers, haemacytometers, polarimeters, polariscopes, photometers, ophthalmoscopes, *slit lamps*, *corneal microscopes*, optical measuring or optical testing instruments, testing or recording instruments for ophthalmological purposes, . . .

(b) Azimuth mirrors, parabolic or mangin mirrors for search-light reflectors, mirrors for optical, dental, or surgical purposes, photographic or projection lenses, sextants, octants, opera or field glasses (not prism binoculars), telescopes, *microscopes*, all optical instruments, . . . not specially provided for, . . . [Emphasis supplied.]

From the brief reference contained in the affidavit of Mr. Bannon, accompanying defendant's motion for summary judgment, it ap-

¹ Tariff Classification Study (Volume 9), Explanatory and Background Materials: Schedule 7 at 100, 102.

pears that the slit-lamp microscope manufactured by Nikon, the subject merchandise in this action, is an improved version of the corneal microscope used in the early 1920's, in that it now has the slit light source permanently made a part of the instrument. Bannon's Affidavit at ¶11. The meager record as to the meaning of the terms "slit-lamps" and "corneal microscopes" as well as the lack of any explanatory definition contained in the Tariff Act of 1930 and its legislative history, has caused the court to initiate further investigation with respect thereto.

The multivolume work, *Systems of Ophthalmology*, is illuminating in providing a history of the slit-lamp and corneal microscope and their relationship to modern ophthalmic instruments:

THE SLIT-LAMP

The slit-lamp together with the corneal microscope forms a system of focal illumination of extreme accuracy and mobility which has done more to elucidate the finer changes occurring in ocular disease than any other method. With its evolution the name of Gullstrand will always be associated.

* * * * *

THE CORNEAL MICROSCOPE. A binocular loupé which is held by the observer, if it is to provide sufficient magnification, presents the insuperable disadvantage of unsteadiness: for this reason it was discarded by Gullstrand as soon as he had evolved a system of illumination sufficiently powerful and susceptible of control to make high magnifications practicable. A microscope had been introduced by Abbé in 1881 and was adapted by Siedentopf, wherein the light from a single objective was distributed between two oculars by prisms to obtain a stereoscopic effect (the bi-tubus microscope); . . . A better instrument was the corneal microscope originally devised by Czapski (1897-99) and developed by Zeiss . . . Originally it was used with the inadequate illumination provided by a diffusely radiating electric lamp fixed above it, but when combined with the slit-lamp of Gullstrand it formed an exceedingly useful observation system.

The Czapski-Zeiss corneal microscope was binocular, and an erect image with a full stereoscopic effect was obtained by a system of Porro prisms with four reflections, which also allowed the eyepieces to be adapted to suit the interpupillary distance of the observer. The instrument was extremely mobile, allowing linear movements in the sagittal, frontal, and vertical directions, and rotations around the fronto-horizontal and vertical axes. On these principles all subsequent corneal microscopes have been based.

THE SLIT-LAMP. In 1911 Allvar Gullstrand first demonstrated a model of the slit-lamp. It was composed essentially of a Nernst lamp, the luminous filament of which was focused upon a slit by a collecting system of lenses.

* * * * *

As time has gone on, many models of the slit-lamp have been evolved, but the principle of all of them is based on the original model of Gullstrand . . . A considerable advance was introduced in the Bausch and Lomb slit-lamp by Koeppe in 1923 which provided co-axial rotation of the illumination system and the microscope, an idea improved by Fincham (1924) who linked the two so that each remained in focus with the other . . . A second innovation was due to Comberg (1933) whereby (in the Zeiss instrument) the illumination was set vertically and the beam deflected horizontally into the eye by a prism in such a way that it could be made nearly co-axial with the microscope, both moving about a single common axis . . . Finally, in 1937, Goldmann (in a Haag-Streit model of the Gullstrand type of instrument with its horizontal optical system) added a joy-stick control for fine simultaneous adjustment of the lamp and the microscope. [Duke-Elder, *Systems of Ophthalmology*, Volume VII at 248-49, 252 (1962).]

From the foregoing it is clear that the corneal microscope and the slit-lamp illumination source were utilized together in making eye examinations from an early date and that the two devices were physically linked to each other by the year 1924. Though many innovations and improvements have been made since the slit-lamp illumination source and corneal microscope were first used together, the Nikon slit-lamp microscope in issue herein is apparently based on that original model.²

Insight into the legislative intent with respect to the effect to consolidate related medical instruments and appliances used for diagnostic and treatment purposes is provided in the Explanatory Notes contained in the Tariff Classification Study (Volume 9), Schedule 7, Part 2 at 144-45:

SUBPART B.—MEDICAL AND SURGICAL INSTRUMENTS AND APPARATUS

This subpart covers a wide variety of instruments and appliances used generally in professional practice for diagnosis, prevention, and treatment of diseases, the correction of deformities and defects, the repair of injuries, etc. These articles are presently dutiable at a number of different rates in a number of widely separated paragraphs in seven of the present tariff schedules. In assimilating the various provisions for these closely related instruments and appliances into this subpart, articles imported in significant quantities have been provided for wherever

² It is noteworthy that the use of both of the terms "slit lamp" and "corneal microscope" has survived until today. A recent volume of an optical instruments trade publication defined "ophthalmic instruments" as "[a] family of specialized instruments used by ophthalmologists and optometrists to study a patient's eyes and prescribe spectacles. It includes . . . the Slit lamp and Corneal Microscope to observe small regions of the cornea that may be opaque or may scatter light." The Optical Industry & Systems Purchasing Directory, Book 2 at D-86 (26th ed. 1980). The 1972 Standard Industrial Classification Manual lists both "Corneal microscopes" and "Slit lamps (ophthalmic goods)" under Industry No. 3341, "Surgical and Medical Instruments and Apparatus."

Interestingly, Topcon, a distributor of instruments similar to the subject merchandise, markets its slit lamp microscope as a "Slit Lamp Corneal Microscope."

possible at the existing rates of duty. However, in some instances the rates reflect, estimated weighted averages of the presently effective duties.

Items 709.01 through 709.05 cover optical instruments and appliances. Item 709.01 covers principally medical and surgical mirrors and reflectors, now dutiable under paragraph 228(b), whether or not such mirrors and reflectors are used for reflecting images or for reflecting light on objects. The current rate of duty is proposed. The binocular loupes provided for in item 709.03 are currently dutiable under paragraph 228(b) as microscopes. The proposed rate for such loupes is the current rate of duty applicable to most imports of these articles. Item 709.05 covers all other optical instruments and appliances. Included among such instruments would be ophthalmoscopes, orthoptic and sight testing apparatus, cases of trial lenses and spectacles, similar articles all of which are currently dutiable under paragraph 228(a). The existing rate of duty for such articles is reflected in item 709.05.

By specifically excluding "compound microscopes" pursuant to headnote 1(ii), *supra*, which under paragraph 228(b) of the Tariff Act of 1930 were classified as "microscopes," Congress has further evidenced its intent to provide that the provision for microscopes corresponds with the trade and commercial meaning therefor. As further noted in the Tariff Classification Study, *supra*, at 143, the following explanation is contained:

With the elimination of the simple magnifiers and the like, the provision for microscopes corresponds closely with trade designations.

In the Summaries of Tariff Information, Volume 2, Part 2 at 112 (1948), the following comment is made with respect to the scope of the microscope provision in paragraph 228(b), Tariff Act of 1930:

The microscopes considered herein are both the general-purpose instruments and the highly specialized research types used in industrial, scientific and educational laboratories.

The comment relating to paragraph 228(a) at page 117, states:

This summary considers (1) instruments and apparatus for the examination, diagnosis, and measurement of the human eye;

The Summaries of Trade and Tariff Information, Schedule 7, Volume 2 at 39 (1970), provides this description of the types of microscopes classified under items 708.71-.76, .78, TSUS:

The optical, electron and proton microscopes are of two types: general purpose (primarily optical), used by amateurs, teachers, etc.; and specialized research types, used by industrial, scientific, and educational laboratories for the study of minute particles of matter in such fields as botany, chemistry, medicine, metallurgy, and food production.

The 1970 Tariff Summaries provides this description of the articles classified under items 709.01-.27, TSUS, at page 59:

The articles considered in this summary include a wide variety of instruments and appliances used in the professional practice of medicine and dentistry for the prevention, diagnosis, and treatment of diseases and injuries and the correction of physical deformities and defects of the human body.

A comparison of the 1948 Tariff Summaries, relating to the Tariff Act of 1930, and the 1970 Tariff Summaries, relating to the Tariff Schedules of the United States, reveals that the administrative practice has consistently been to classify only general-purpose instruments and highly specialized research-type instruments for industrial, scientific and educational laboratories as "microscopes," and to exclude from the scope of that term, those specialized diagnostic instruments such as the subject merchandise, which are utilized by medical practitioners to make physical examinations to detect diseases and defects of the body.²

The Tariff Classification Study, Submitting Report at 8 acknowledges:

The '*Brussels Nomenclature*' and the '*Standard Industrial Classification Manual*' exerted the greatest influence on the arrangement of the proposed revised schedules. [Emphasis supplied.]

Thus, the Brussels Nomenclature is a useful and helpful source of legislative history when a nexus can be found between it and the tariff schedules by the use of identical or similar phraseology. See *United States v. Norman G. Jensen, Inc.*, 64 CCPA 51, 550 F. 2d 662 (1977). In the instant action, the relevant provisions in the tariff schedules and the Brussels Nomenclature (1955) are very similar with respect to the scheme of classification as well as phraseology. The following Brussels headings at page 178 have a close nexus to the superior heading to items 703.71-.82, TSUS:

- 90.11 Microscopes and diffraction apparatus, electron and proton.
- 90.12 Compound optical microscopes, whether or not provided with means for photographing or projecting the image.
- 90.17 Medical, dental, surgical and veterinary instruments and appliances (including electro-medical apparatus and ophthalmic instruments).

² Although the long standing administrative practice so established by the Tariff Summaries is not evidence of Congressional intent, it is entitled to be given weight by the court. *Hawaiian Motor Co. v. United States*, 67 CCPA —, C.A.D. 1241, 617 F. 2d 286 (1980); *The Englishtown Corp. v. United States*, 64 CCPA 84, 553 F. 2d 1258 (1977).

The Explanatory Notes to Brussels heading 90.12 at page 1035 delineate the scope of the "Compound optical microscopes" provision:

The present heading covers microscopes as used by amateurs, teachers, etc., and those for industrial use or for research laboratories;

The Explanatory Notes to heading 90.17 at page 1049 provide:

This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives, etc.), either to make a diagnosis, or to prevent or treat an illness, . . .

The heading does not cover;

* * * * *

(ij) Microscopes, etc., of heading 90.11 or 90.12.

The Explanatory Notes continue at page 1051 stating that heading 90.17 does cover ophthalmic instruments used for diagnostic purposes. The Brussels Nomenclature, and the Explanatory Notes thereto which closely parallel the language used in the 1948 Summaries and 1970 Summaries thus well serve to evidence Congressional intent to limit the scope of the term "compound optical microscope," as used in the tariff schedules, to general-purpose microscopes and those designed for industrial use or research laboratories and to exclude from the term "compound optical microscope," those specialized instruments used by medical practitioners to examine parts of the body for the purpose of diagnosing diseases or abnormalities.

Further cogent evidence that Congress did not intend to classify the subject merchandise as a "compound optical microscope" under item 708.73, TSUS, but rather as an ophthalmic instrument properly classifiable under item 709.05, TSUS, is provided in the Standard Industrial Classification Manual (SICM) (1957). The SICM, indeed, is closely similar in classification order and phraseology to the relevant tariff schedule provisions and is therefore useful as a source of legislative history. The SICM provisions state in relevant part:

Group No.	Industry No.
383	Optical instruments and lenses
-----	3831 Optical instruments and lenses
-----	Establishments primarily engaged in the production of optical lenses and prisms, and in manufacturing optical instruments such as microscopes, telescopes, field and opera glasses; . . .
*	*
*	*
*	*
*	*
*	*

Group Industry
No. No.

384 Surgical, medical, and dental instruments and supplies
----- 3841 Surgical and medical instruments and apparatus
----- Establishments primarily engaged in manufacturing medical,
surgical, *ophthalmic*, and veterinary *instruments and apparatus*. [Emphasis supplied.]

The index to the SICM states at page 368 that "Microscopes, corneal" are classified under Industry No. 3841 and that "Microscopes, except corneal" are classified under Industry No. 3831. The index further provides at page 401 that "Slit lamps (ophthalmic goods)" are likewise classified under Industry No. 3841. Clearly, the subject merchandise in this action would have been classified under SICM Industry No. 3841, "Surgical and medical instruments and apparatus" and not as a "microscope" under Industry No. 3831.

From the evidence adduced, and the application of the relevant principles of law, the court must conclude that Congress did not intend that the subject merchandise be classified as a "compound optical microscope" under item 708.73, TSUS, but rather as an ophthalmic instrument under item 709.05, TSUS.

The classification of the subject merchandise as made upon liquidation, therefore, must be affirmed.

Let judgment be entered accordingly.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, June 8, 1981.
 The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHER,
Acting Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD Par. or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
P81/74	Rao, J. June 1, 1981	Rhone Poulen Inc.	80-4-00693	Item 423.96 5%	Item 519.37 0.44 per lb.	Agreed statement of facts.	New York Artificial abrasives.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	PORT OF ENTRY AND MERCHANDISE	
						Par. or Item No. and Rate	Par. or Item No. and Rate
PSI/75	Rao, J. June 1, 1981	Verona Div. Baychem Corp.	78-2-00355	Item 409.00 7¢ per lb. plus 4.5%	Item 405.25 2.8¢ per lb. plus 1.8% or 1.4¢ per lb. plus 9%	Agreed statement of facts.	New York White and black urethane pastes; plastics materials
PSI/76	Newman, J. June 1, 1981	A. N. Deringer, Inc., a/c Uniroyal, Inc.	78-1-00180	Item 657.20 9.5%	Item 772.65 4%	Uniroyal, Inc., c/o A. N. Deringer, Inc. v. U.S. (A.b. PS0/59)	Champlain-Rouses Point (Ogdensburg) Rubber hose, pipe or tubing in various lengths with attached fittings
PSI/77	Newman, J. June 1, 1981	A. N. Deringer, Inc., a/c Uniroyal, Inc.	78-8-01538	Item 657.20 9.5%	Item 772.65 4%	Uniroyal, Inc., c/o A. N. Deringer, Inc. v. U.S. (A.b. PS0/59)	Champlain-Rouses Point (Ogdensburg) Hose, pipe or tubing in various lengths with attached fittings
PSI/78	Newman, J. June 1, 1981	A. N. Deringer, Inc., a/c Uniroyal, Inc.	78-2-00222	Item 657.25 9.5% Item 657.40 9.5%	Item 772.65 4%	Uniroyal, Inc., c/o A. N. Deringer, Inc. v. U.S. (A.b. PS0/59)	Champlain-Rouses Point (Ogdensburg) Rubber hose, pipe or tubing in various lengths with attached fittings
PSI/79	Newman, J. June 1, 1981	Uniroyal, Inc.	78-8-01280	Item 657.25 9.5%	Item 772.65 4%	Uniroyal, Inc., c/o A. N. Deringer, Inc. v. U.S. (A.b. PS0/59)	Champlain-Rouses Point (Ogdensburg) Rubber hose, pipe or tubing in various lengths with attached fittings
PSI/80	Rao, J. June 2, 1981	K. Mart Corporation	80-8-01494	Item 654.20 8.5%	Item A654.20 Free of duty	Agreed statement of facts	Savannah Musical jewelry boxes produced within Taiwan

<p>Re: C.J. June 2, 1981</p> <p>81/81</p>	<p>S. S. Kresge Co. June 2, 1981</p> <p>79-4-0064</p> <p>Item 734.97 9%</p> <p>General Headnote 3(c) of TRUS, authorized by Title V of Trade Act of 1974, and Ex. Order No. 11888 of 11/26/75</p>	<p>Agreed statement of facts</p> <p>Item A734.97 Free of duty pursuant to General Headnote 3(c) of TRUS, authorized by Title V of Trade Act of 1974, and Ex. Order No. 11888 of 11/26/75</p>	<p>New York Ski gloves produced within Taiwan</p> <p>Item 705.96 35%</p> <p>Importers Associates, Inc. 78-12-02302</p>	<p>New York Vinyl ski mittens</p> <p>Item A734.97 Free of duty under Gen- eralized System of Preferences as provided for in Trade Act of 1974, as evidenced by GSP certificates of origin</p>

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/83	Rao, J. June 2, 1981	Gambles Import Corporation	78-5-00881	Item 653.95 8.5%	Item 653.95 Free of duty under Gen- eralized System of Preferences	Agreed statement of facts	Los Angeles Stainless steel cookware; product of beneficiary developing country
P81/84	Rao, J. June 2, 1981	Bob Wolf Associates, Inc.	77-4-00888	Item 700.35 8.5% Item 700.60 20%	Item 700.35 8.5% Dutiable on basis of export values said value is f.o.b. Keeding, Taiwan In- voice unit values, net, as set forth in agreed state- ment of facts	Agreed statement of facts	Los Angeles Men's and boy's leather footwear
P81/85	Rao, J. June 2, 1981	Zayre Corp.	80-5-00716	Item 727.55 10%	Item 727.55 Free of duty under GSP by virtue of Ex. Order No. 11888 of 11/24/75	Agreed statement of facts	Savannah Furniture; product of elig- ible beneficiary country

PSI/86	Watson, J. June 2, 1981	Albuquerque Brokerage, Inc., a/c. Sunbelt Corp. est.	79-12-01817, 77-4-00691	Item 760.38 27.5% Item 400.00 22.5% + 3.5¢ per lb.	Item 520.39 2.5% Item 422.00 5% etc.	Evran Importers, Inc. v. U.S. (C.D. 4869)	Albuquerque Turquoise cabochons
PSI/87	Watson, J. June 2, 1981	Mobay Chemical Corp., Chemagro Agricultural Division				F. W. Myers & Co., Inc. v. U.S. (C.D. 4870)	Kansas City (St. Louis) "Santon 50%," "Santon 50% Wettable Powder," etc.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisal Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
RI/219	Re, C.J. June 1, 1981	Asea Inc.	76-2-00503	Export value	Involved unit prices, not packed, as set forth in entries and invoices	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New Orleans Electrical equipment and apparatus
RI/220	Re, C.J. June 1, 1981	Asea Inc.	76-6-01489	Export value	Equal to involved unit prices, net packed, as set forth in entries and invoices	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New Orleans Electrical equipment and apparatus
RI/221	Re, C.J. June 1, 1981	Asea Inc.	76-6-01489-S	Export value	Equal to involved unit prices, net packed, as set forth in entries and invoices	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago Electrical equipment and apparatus
RI/222	Re, C.J. June 1, 1981	Asea Inc.	76-8-01888	Export value	Equal to involved unit prices, net packed, as set forth in entries and invoices	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Electrical equipment and apparatus

R81223	Watson, J. June 1, 1981	Gelcy Chemical Corporation	R66/18626	United States value	U.S. selling price less 1% cash discount as determined by cus- toms officer at time of appraisal; less 24.2% representing profit and general ex- penses usually made in U.S. on sales of dy- estuffs of same class or kind; less costs of transportation and in- surance from place of shipment to place of delivery in amounts determined by cus- toms officer at time of appraisal; divid- ed by 1.40 or such other factor applied by customs officer, to allow for customs du- ties payable on im- ported dyestuffs	New York Benzonoid dyestuffs	Corporation et al. (C.A.D. 1155)
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NUMBER	DATE OF DECISION	PLAINTIFF	NO.	VALUATION	HELD VALUE	BASIS	ENTRY AND MERCHANDISE
881/224	Watson, J. June 1, 1981	Gelgy Chemical Corporation	R&5/18876	United States value	U.S. selling price, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Gelgy Chemical Corporation et al. (C.A.D. 1156)	New York Benzoid dyestuffs

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY, JUNE 18, 1981

The appended notices relating to investigations by the United States International Trade Commission are published for the information of Customs Officers and others concerned.

WILLIAM T. ARCHERY,
Commissioner of Customs.

In the Matter of
CERTAIN FOOD SLICERS AND
COMPONENTS THEREOF

Investigation No. 337-TA-76

*Notice of Termination of Taiwan Timing Trading Co. as Party
Respondent*

AGENCY: U.S. International Trade Commission.

ACTION: Termination of Taiwan Timing Trading Co. as a party respondent in the above-captioned investigation.

SUMMARY: Having determined that this matter is properly before the Commission and having reviewed the record in this investigation, the Commission on June 8, 1981, terminated Taiwan Timing Trading Co. as a party respondent in Investigation No. 337-TA-76.

SUPPLEMENTARY INFORMATION: This investigation, under section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) concerns alleged infringement of U.S. Letters Patent 3,766,817 by respondents E. Mishan & Sons, Albert E. Price, Inc., Crest Industries Corp., and Taiwan Timing Trading Co. The Commission instituted the investigation on December 4, 1979, and published notice thereof in the Federal Register of December 21, 1979 (44 F.R. 75733).

On December 22, 1980, the Commission denied a joint motion (Motion No. 76-12) for summary determination, on the grounds that genuine issues of material fact remained with respect to both Taiwan Timing and Mishan. Price and Crest were subsequently terminated as parties respondent to the investigation on the basis

of a settlement agreement and a licensing agreement, respectively (46 F.R. 16159, 46 F.R. 18632).

On February 23, 1981, complainant Prodyne moved to dismiss Taiwan Timing as a party respondent (Motion No. 76-15). On March 26, 1981, the presiding officer recommended that the Commission grant the motion (Second Recommended Determination).

The Commission published notice in the Federal Register seeking comments from the public regarding the recommended determination (46 F.R. 25375) and in addition requested comments from certain Government agencies pursuant to 19 CFR § 210.14(a)(2). No comments adverse to termination were received.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission Action and Order. Such petitions must be in accord with Commission Rule 210.56 (19 CFR § 210.56).

Copies of the Commission Action and Order in this matter and any other public documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0143.

By order of the Commission.

Issued: June 10, 1981.

KENNETH R. MASON,
Secretary.

Investigation No. 104-TAA-3

CERTAIN SPIRITS FROM IRELAND

AGENCY: United States International Trade Commission.

ACTION: Institution of a countervailing duty investigation.

SUMMARY: On May 25, 1914 in T.D. 34466 the Department of the Treasury (Treasury) imposed countervailing duties, under section 4 of the Tariff Act of 1913, on certain classes of spirits imported from the United Kingdom of Great Britain and Ireland. On June 20, 1935, in T.D. 47753, Treasury stated that countervailing duties continued to be applicable to spirits from Ireland, because the export bounties set forth in T.D. 34466 had been paid

continuously since the date of the notice notwithstanding the establishment of the Irish Free State. Accordingly imports of spirits from Ireland, currently provided for under items 168.96, 168.98, 169.19, 169.20, 169.46 and 169.47 of the Tariff Schedules of the United States have been subject to countervailing duties.

On January 1, 1980, the provisions of the Trade Agreements Act of 1979 became effective, and on January 2, 1980, the authority for administering the countervailing duty statute was transferred from Treasury to the Department of Commerce (Commerce). On May 13, 1980, Commerce published a notice in the Federal Register (44 F.R. 31455) of intent to conduct an annual administrative review of all outstanding countervailing duty orders.

The U.S. International Trade Commission received a request for this investigation of March 28, 1980, from the Delegation of the Commission of European Communities.

As required by section 751(a)(1) of the Tariff Act of 1930, Commerce has conducted its first annual administrative review of the countervailing duty order on spirits from Ireland. As a result, Commerce, in the Federal Register of April 20, 1981 (46 F.R. 22632), preliminarily determined that the net subsidy conferred is 0.004 Irish pounds per liter of alcohol in plain spirits and 0.008 Irish pounds per liter of alcohol in compounded spirits. On the basis of that determination, the United States International Trade Commission, pursuant to section 104(b)(2) of the Trade Agreements Act, is instituting an investigation with respect to certain spirits from Ireland. Commerce reported that it would issue a final determination in this case after analysis of issues received in written comments or at a hearing. However, no hearing was requested and no written comments had been received by the deadline for their submission to Commerce, May 20, 1981. Commerce's final determination as to the most current level of subsidies will be made as soon as possible.

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator, U.S. International Trade Commission, Washington, D.C. 20436 (202-523-0439).

SUPPLEMENTAL INFORMATION: The United States International Trade Commission is instituting this countervailing duty investigation to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of spirits from Ireland provided for under items 168.96, 168.98, 169.19, 169.20,

169.46 and 169.47 of the Tariff Schedules of the United States covered by the countervailing duty if the order were to be revoked.

Public Hearing.—Any person with an interest in this investigation may request in writing that the Commission hold a public hearing in connection with this investigation. Any such request must be received by the Commission within 14 days of the date of publication of this notice of investigation in the Federal Register. Such requests should be filed with the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street, NW., Washington, D.C. 20436.

Questionnaires.—No questionnaires soliciting information from U.S. producers importers, or purchasers of the articles under investigation will be prepared or mailed unless a person with an interest in this investigation requests that the Commission prepare and mail such questionnaires. Any such request must be received by the Commission within 14 days of the date of publication of the notice in the Federal Register. Such requests should be filed with the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436.

Written submission.—Any person may submit to the Commission on or before June 26, 1981, written statements of information pertinent to the subject matter of the investigation. A signed original and nineteen true copies of such statements must be submitted in accordance with section 201.8 of the Commission's Rules of Practice and Procedure, 19 CFR section 201.8 (1980).

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately and each sheet must be clearly marked at the top "Confidential business data." Confidential submissions must conform with the requirements of section 201.6 of the Rules of Practice and Procedure, 19 CFR 201.6. All written submissions, except confidential business data, will be available for public inspection.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

This notice is published pursuant to section 207.20 of the Commission's Rules of Practice and Procedure (19 CFR 207.20, 44 F.R. 76458).

By order of the Commission.

Issued: June 5, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN STEEL ROD TREATING
APPARATUS AND COMPONENTS
THEREOF

Investigation No. 337-TA-97

Notice of Grant of Leave To Review Order No. 13 and of Affirmance of Order No. 13.

AGENCY: U.S. International Trade Commission.

ACTION: Grant of Application for review of Order No. 13 and affirmance of Order No. 13.

SUMMARY: Notice is hereby given that on the basis of an Application for review of Order No. 13 filed by parties respondent Korf Industrie und Handel GmbH & Co., KG, and Korf Engineering GmbH, (Motion No. 97-40), the Commission has granted the Application for review and affirmed the presiding officer's denial of Motions No. 97-28 and 97-30 (Order No. 13).

AUTHORITY: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. §1337) and in section 210.60(b) (19 CFR § 210.60(b)) of the Commission's *Rules of Practice and Procedure*.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by Morgan Construction Co., the Commission instituted investigation No. 337-TA-97 on January 23, 1981, to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of the importation into and sale in the United States of certain steel rod treating apparatus and components thereof. Complainant Morgan alleges that the accused steel treating apparatus infringes claims 1-7 of U.S. Letters Patent 3,390,871. Notice of the Commission's investigation was published in the Federal Register on January 28, 1981 (46 F.R. 9263).

Respondents Korf Industrie und Handel GmbH & Co., KG and Korf Engineering GmbH, moved on April 30, 1981 to be dismissed as parties respondent to this investigation for improper service of process and lack of *in personam* jurisdiction (Motions Nos. 97-28, 97-30). The presiding officer denied the motions (Order No. 13), but granted respondents leave to file an interlocutory appeal with the Commission.

FOR FURTHER INFORMATION CONTACT: Warren H. Maruyama, Esq., Office of the General Counsel, U.S. International Trade Commission; telephone 202-523-0143.

By order of the Commission.

Issued: June 8, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN CARD DATA IMPRINTERS
AND COMPONENTS THEREOF } Investigation No. 337-TA-104

Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 7, 1981, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of AM International, Inc., 1900 Avenue of the Stars, Los Angeles, Calif. 90067 and Bartizan Corp, 24 Ashburton Avenue, Yonkers, N.Y. 10701. The complaint alleges unfair methods of competition and unfair acts in the importation of certain card data imprinters into the United States, or in their sale, by reason of alleged direct or induced infringement of (1) claim 7 of U.S. Letters Patent 3,272,120 and (2) claim 12 of U.S. Letters Patent 3,340,800. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation; during the investigation, to issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond; and, after a full investigation, to issue an order excluding said articles from entry into the United States for the life of each patent in issue.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on June 4, 1981, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is reason to believe that there is a violation or whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain card data imprinters and components thereof into the United States, or in their sale, by reason of alleged direct or induced infringement of (1) claim 7 of U.S. Letters Patent 3,272,120 and (2) claim 12 of U.S. Letters Patent 3,340,800, the effect or tendency of which is to destroy or sub-

stantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

AM International, Inc.,
1900 Avenue of the Stars,
Los Angeles, Calif. 90067

Bartizan Corporation,
24 Ashburton Avenue,
Yonkers, N.Y. 10701

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

National Business Systems, Inc.,
3206 Orlando Drive,
Mississauga, Ontario L4V 1R5,
Canada

National Business Systems, Inc.,
525 Executive Boulevard,
Elmsford, N.Y. 10523

(c) Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW, Washington, D.C. 20436, shall be the Commission Investigative Attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, 701 E Street NW, Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and components thereof" has been added to paragraph (1) above on the basis of informal investigatory activities by the Commission which revealed that said card data imprinters can be imported in component parts as well as entirely assembled units.

Responses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to sections 201.16(d) and 210.21(b) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein is available for inspection during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Ralph Elsas-Patrick, Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-0440.

By order of the Commission.

Issued: June 8, 1981.

KENNETH R. MASON,
Secretary.

731-TA-43 (Preliminary)

FRESH CUT ROSES FROM COLOMBIA

Notice of Institution of a Preliminary Antidumping Investigation and Scheduling of Conference

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of a preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry is materially retarded by reason of imports of fresh cut roses from Colombia, provided for in item 192.18 of the Tariff Schedules of the United States, allegedly sold at less than fair value.

EFFECTIVE DATE: June 4, 1981.

FOR FURTHER INFORMATION CONTACT: John MacHatton, Supervisory Investigator, telephone (202-523-0439), U.S. International Trade Commission, Room 342, 701 E Street N.W., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION:

Background. On June 4, 1981, the Commission received a petition on behalf of Roses Incorporated, a trade association. Accordingly, on June 8, 1981, the Commission, pursuant to section 733(a) of the Tariff Act of 1930, 19 U.S.C. 1673b(a) (Supp. III 1979), instituted preliminary antidumping investigation No. 731-TA-43 (Preliminary).

Authority. Section 733(a) of the Tariff Act of 1930 requires the Commission to make a determination of whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports allegedly sold in the United States at less than fair value. Such a determination must be made within 45 days after the date a petition is received. This investigation will be subject to the provisions of the Commission's Rules of Practice and Procedure and, particularly, to part 19 CFR 207.

Written submissions. Any person may submit to the Commission on or before July 6, 1981, a written statement of information pertinent to the subject matter of this investigation. A signed original and nineteen copies of such statements must be submitted.

Any business information which a submitter desires the Commission to treat as confidential shall be submitted separately, and each sheet must be clearly marked at the top "Confidential Business Data." Confidential submissions must conform with requirements of section 201.6 of the Commission's Rules and Practice of Procedures, 19 CFR 201.6. All written submissions, except for confidential business data, will be available for public inspection.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.d.t., on June 30, 1981, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Persons wishing to participate in the conference should contact the supervisory investigator for the investigation, Mr. John MacHatton (202-523-0439) by the close of business (5:15 p.m., e.d.t.) June 26, 1981. It is anticipated that persons in support of the imposition of antidumping duties and persons opposed to such duties will each be collectively allocated 1 hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

Inspection of petition. The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

Issued: June 9, 1981.

KENNETH R. MASON,
Secretary.

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